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Cautionary Tales for Principals

Principals are school leaders. They are supervisors. And they are employees. Job security for principals demands that principals act in accordance with all applicable rules of conduct and enforce all applicable rules of conduct. Because principals are school leaders, they must model proper behavior that is beyond reproach. Not only must they act in an exemplary manner, but they must also stop inappropriate behavior of those they supervise.

There are three School Code provisions that address discipline of principals—section 1122, 24 P.S. §11-1122; section 514, 24 P.S. §5-514, and section 1151, 24 P.S. §11-1151.

Section 1122 governs dismissals of professional employees. Most principals are "professional employees" and, therefore, protected by section 1122. However, sometimes a principal may not have achieved tenure (as where he or she was hired from another state and never obtained tenure in Pennsylvania), in which case the principal is protected, not by section 1122, but by section 514 of the School Code. Section 514 of the School Code governs the termination of non-tenured employees of the school district. Finally, section 1151 of the School Code governs the demotion of tenured employees, including principals. There are no provisions in the School Code that address disciplinary suspensions.[1]

Section 1122 of the School Code has been interpreted as providing a strong degree of job protection when it comes to dismissals. Principals can be discharged for, among other things, "persistent negligence in the performance of duties," "willful neglect of duties" and "persistent and willful violation of or failure to comply with school laws of this commonwealth (including official directives and established policy of the board of directors)." 24 P.S. §11-1122. The phrases essentially allow a principal to be dismissed if he or she fails to do what he or she should be doing—failing to comply with their duties. The "neglect of duties" can be "willful," or it can be "negligent," if it has some degree of persistence.

For a principal not to violate his or her duties, the principal must know what those duties are. The duties are contained in law, in school board policy, in administrative regulations, any code of employee conduct and the job description. Therefore, principals need to have a working knowledge of applicable law, policies, administrative regulations, codes of conduct and job description.

For non-tenured principals, the standard for dismissal is much less. Under section 514 of the School Code, a non-tenured principal can be discharged for, among other things, "neglect of duty" or "other improper conduct." 24 P.S. §5-514. Under these standards, there is no requirement that the principal's conduct be willful or persistent. Any "improper conduct" can support a dismissal of a non-tenured principal.

The standard for a demotion is even less. Under section 1151 of the School Code, school districts may demote a principal for any reason if the reason is not arbitrary or discriminatory. In *Peiffer v. Lake-Lehman School District,*[2] the Secretary of Education said:

It is apparent from a reading of the cases addressing demotions that school districts possess broad discretion in personnel and administrative actions which result in demotions. Courts have been loath to interfere with a school district's exercise of discretion in a demotion case unless the court is satisfied that the petitioner has met his or her heavy burden of proving that the demotion was arbitrary or based upon discriminatory considerations.

In *Harris v. Philadelphia School Dist.*, TTA 2-91, 29 SLIE 77 (1992), *aff'd* 155 Pa. Cmwlth. 169, 624 A.2d 784 (1993), the Secretary of Education ruled that the school district does not have to establish "just cause" for a demotion. Examples of the types of conduct supporting a demotion are unsatisfactory performance by employee[3] and inability to communicate appropriately with supervisors and subordinates.[4]

Regarding disciplinary suspensions of principals, there are no provisions in the School Code that address the issue or that establish the standards that must be met by a school district to impose the suspension. Because of the lack of a School Code provision, it was argued that school districts had no power or authority to impose a disciplinary suspension of tenured employees. However, almost 40 years ago, the Pennsylvania Supreme Court ruled that the power was implied. The court said:

Rike's argument that the board was without power to suspend after conducting a hearing pursuant to Sections 1122 and 1127 is likewise without merit. That a board of school directors possesses the authority to impose lesser forms of discipline than complete termination of a tenured teacher's contract is by now beyond question. The general assembly, in whom our constitution reposes the responsibility of establishing the parameters of administering the education of our youth, PA CONST. Art. III, Section 14, has created school districts and imbued them with "all necessary powers to enable them to carry out the provisions of this act," 24 P.S. § 2-211, including the power to employ teachers, 24 P.S. § 11-1106. Inherent in the school district's power to employ is the power to control certain activities of teachers, Kaplan v. Philadelphia School District, 38 Pa. 213, 130 A.2d 672 (1957). As stated by Justice (now Chief Justice) Nix in Neshaminy Fed. of Teachers v. Neshaminy School District, 501 Pa. 534, 545, 462 A.2d 629, 635 (1983): "The power to regulate conduct, of course, would be illusory absent a concomitant power to enforce rules through the imposition of some form of discipline."

Rike v. Commonwealth, 508 Pa. 190, 195, 494 A.2d 1388 (1985).

It is this writer's opinion that school districts can impose a disciplinary suspension without pay for any reason, as long as the reason is not arbitrary or discriminatory. I base this opinion on the fact that the School Code's failure to set forth the standards for imposing a demotion meant that any reason other than an arbitrary or discriminatory reason was permissible. The same reasoning should apply to disciplinary suspensions.

Although the great majority of principals adhere to the laws, policies, administrative regulations and codes of conduct governing their employment, there are always exceptions here and there of school principals who are either unwilling or unable to follow such guidance. To the rest of the school principals, these outliers serve as *cautionary tales*. In a somewhat recent instance, an elementary school assistant principal with 20 plus years of experience, allegedly made statements about the appearance of a student's mother, flirted with a female staff member in front of others, showed a picture of a female teacher's torso whose shirt was too tight, made comments or jokes with sexual innuendo to or in front of staff. Notably, in one instance, when subordinates were improperly discussing whether a co-worker's breasts were real or fake, rather than shut down such inappropriate discussion, the assistant principal weighed in that they were real. The school district demoted the assistant principal to a teaching position under section 1151 of the School Code.

At a school board hearing, the administration was asked why the assistant principal was demoted under these facts. The witness testified, in part, that the assistant principal was demoted "based on the fact of his lack of professionalism and his inability to understand professional relationships and boundaries with subordinates." The lesson to learn is that the behavior of principals must always be professional. In addition, principals must insist upon professionalism by teachers and support staff.

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In another recent instance, a junior high school assistant principal was demoted to a teaching position under Section 1151 in the first year of her appointment as assistant principal. Due to deficient performance, the school district gave her a performance improvement plan ("PIP"). After receiving the PIP, her performance did not improve. Among her

shortcomings were allegations of late arrival to meetings, failing to complete formal and informal observations and failing to attend a staff development meeting, an Individualized Education Program (IEP) meeting and an informational meeting at the intermediate unit. The assistant principal also allegedly mishandled a student threat situation and several student incidents, whereby staff and parents raised complaints about failure to follow through and student discipline and accountability. The lessons to be learned from this case are several. First—perform all duties on a timely basis. Show up for all meetings on time. Respond to emails. Second—do all aspects of your job. Perform required observations and chair required IEP team meetings. Third—don't let others down. When a teacher refers a student to the office for discipline, make sure the teacher knows how it was handled.

Several years ago, an untenured high school principal accepted a donation of carpet and authorized installation without consulting the school board or superintendent. In another instance, the principal searched the locker of a student without reasonable suspicion or notifying the student as required by policy and state regulations. In fact, the principal later admitted to regularly and repeatedly searching lockers without suspicion and without notifying students, and that he failed to keep written records of such searches. On one occasion, the principal took a student's book bag from the locker and took it to the cafeteria where he placed it on a table, walked away to another table 40-60 feet away for a period of time and then left the cafeteria, leaving the backpack unattended. Notably, the principal failed to look into the bag or search the bag. Later the principal returned to the cafeteria where he was alerted by a cafeteria employee that the bag had been searched to discern its owner, and a knife had been found. The principal took the bag to his office, and in the presence of the student, searched the bag and found the knife. The principal then failed to provide the proper notice required under the administrative regulations prior to the informal hearing with the student and his parent. During the student's expulsion hearing, the principal lied under oath as to the discovery of the knife.

The school district fired the principal, and the courts upheld the dismissal. *Jackson v. Shikellamy Sch. Dist.*, 2016 Pa. Commw. Unpub. LEXIS 732 (2016). Reviewing the principal's reasons for doing what he did, the court said:

> *At the time of the searches at issue, Jackson had been an educator for 12 years and the temporary principal at Shikellamy High School for a little under two years. He testified that, as temporary principal at Shikellamy High School, he searched unlocked lockers "all the time . . . if I see a locker undone, I look inside of it." He stated that between 5 to 15 times he had found threats to the health, safety or welfare of the school in such lockers. He explained that unsecured lockers have the "potential to be a drop box . . . [A] student can put drugs in somebody's locker that's not secured, make a drug deal and if something goes wrong, he can say it's not my locker . . .. The other thing is that somebody could put a knife or gun in there, and it could be stored there, and nobody would know about it, except for the person that put it in, and could cause a serious safety issue . . .." Jackson stated that, prior to the knife found on October 16, 2014, he had never found a weapon, but had found "illegal drugs" and "spice." He admitted to not keeping records of the searches as required by school policy. Jackson's reasons for searching the unlocked lockers are based on his own subjective beliefs, a hunch, and not on any individualized reasonable suspicion.*
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> *Jackson v. Shikellamy Sch. Dist.*, 2016 Pa. Commw. Unpub. LEXIS 732, *11-14.

The lessons to be learned from this case are that principals must know the rules—whether constitutional rules such as those for searching lockers or school board rules contained in policy. The *Jackson* case also teaches that "excuses" or "rationales" for not following the rules will not be accepted. In another instance, an assistant principal was charged with secretly recording a meeting attended by a parent and the superintendent. Following a Loudermill hearing, the assistant principal was suspended pending dismissal and dismissal charges were issued. Pending a hearing before the school board, the school district reduced the discipline to a 14-day suspension without pay by settlement agreement. This case illustrates that there is another source for rules which principals need to know—the criminal laws. The secret recording of conversations where people reasonably expect privacy is a crime under the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5701 *et seq*. Not only is the recording of such private conversations unlawful, but so is the disclosure or use of such a recording. 18 Pa.C.S. § 5703. The lesson to learn is that the rules governing the conduct of principals comes from many sources, including criminal laws. In another instance, a principal was accused of a lack of visibility during the workday, a lack of parent or community engagement and a lack of attendance and visibility at after-school events. She was also accused of failing to collaborate with the district-level principals. It was alleged that the principal failed to schedule weekly administrative meetings using an agenda as recommended and then as directed. The principal failed to communicate consistently with her assistant principals during the weekly administrative meetings and after significant events occurred. It was also alleged that the principal mishandled an incident where a teacher allegedly berated a student in front of others and another incident where a guidance counsel reported a teacher touching a student. The principal resigned. However, as in other cases discussed, the lessons of this matter include the need to communicate with others in the school and the need to address deficient performance by subordinates.

Finally, in a recent incident, an acting principal received a text from a parent containing a video of a male individual who appeared to be a minor, exposing his genitals during

a virtual classroom in one of the school's classes which occurred in view of several students. Despite receiving the video, the principal failed to notify the superintendent or the police for at least four days and failed to notify the school district's coordinator of safety. Instead, the principal shared the video with several female co-workers/subordinates, including at least two secretaries. None of the female employees requested to see the video or had a need to see the video. At least one employee indicated disgust, which did not deter him from showing the video to another employee in her presence. Following a Loudermill hearing, the school district demoted the principal and reassigned him back to his original assistant principal position.

From the foregoing, it might be easy to forget that most principals throughout the commonwealth perform their duties competently and intelligently and without incident. The previous are clearly the exceptions and not the rule. However, the summaries of real matters serve as cautionary tales not only for principals but for school districts who employ them.

Obviously, school principals have a dual role in that they not only are responsible for their own performance of their own duties, but they are also responsible for their staff's performance of their duties. Principals are expected to perform their tasks competently and appropriately and in line with policy and directives from above, but they also are expected to hold their staff accountable to complete their tasks and to follow all such policies and directives as well. Thus, principals can and will be held accountable not only for their own failings but the failings of their staff, especially if their staff are not held accountable by the principal. Because principals also serve as leaders and exemplars for their staff, it is not enough for a principal to simply not act improperly, it is also necessary for the principal to affirmatively enforce those rules in terms of the staff, or else the principal risks being held responsible for allowing such behavior to occur. ■

ENDNOTES:

[1]Although section 1124 of the School Code, 24 P.S. §11-1124 governs "suspensions," the suspensions addressed in section 1124 are those that are necessary because of a reduction in force—not discipline. In other words, section 1124 deals with "furloughs," not disciplinary suspensions.

[2]*Peiffer v. Lake-Lehman School District*, TTA 9-93, 33 SLIE 36 (1996).

[3]*Patchel v. Board of School Directors of Wilkinsburg School Dist.*, 42 Pa. Commw. 34, 400 A.2d 229 (1979) (where a demotion is based on an unsatisfactory rating of the demoted employee, the rating need not comply with the rating requirements applicable to the dismissal of a professional employee); *Pasekoff v. Armstrong School Dist.*, TTA 5-87, 26 SLIE 93 (1989); *Bacto v. Williamsport Area School District*, TTA 3-99, 38 SLIE 43 (2001); *Jones v. Pittsburgh Board of Education*, TTA 03-04, 41 SLIE No. 41 (2004).

[4]*Stackpole v. Pittsburgh School Dist.*, TTA 12-86, 26 SLIE 19 (1989).

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